IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CMPMO No. 149 of 2006.

Date of Decision: 20th October, 2006.

Kishan Dev. …. Petitioner

Versus

Ram Pal Sharma. Respondent

Coram
The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting[1]?

For the Petitioner: Mr. Mr. I.D. Bali, Senior Advocate, with Mr. Digvijay Singh, Advocate.

For the respondent: Mr. Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate.

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V.K. Gupta, C.J. (Oral).

After hearing the detailed arguments of the learned counsel for the parties and upon perusal of the impugned order as well as various documents/copies of documents on the record of this petition, I find that even though some conflicting statements have been made by the petitioner during the course of the proceedings of the eviction petition and apparently very conflicting versions have been put up by the petitioner, interests of justice do demand that

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[1] Whether reporters of the Local Papers are allowed to see the Judgment?

the Diary in question should be sent to an Hand Writing Expert for ascertaining whether respondent Ram Pal Sharma had put his signatures or initials against any entry or entries in the said Diary and/or whether the said Diary contains any writing or writings in the hand of the said respondent either with respect to the words or figures. In my considered opinion this course of action shall not only allay the fears/apprehensions of the parties but may also be helpful in deciding the issue with respect to the rate of rent as well as the period for which the rent was paid by the petitioner.

The impugned order, therefore, is set aside with all the consequences. The application filed by the petitioner under Sections 46 and 47 read with Section 73 of the Evidence Act and Section 151 of the Code of Civil Procedure is allowed. The learned Rent Controller is directed to follow up the matter by passing consequential orders and take appropriate consequential action.

Whatever the rate of rent may be or may have been and whatever may be the period for which the petitioner may be held or may not be held liable to pay the arrears of rent (both these issues shall be decided by the Rent Controller in the ultimate analysis) the fact remains that in the

reply filed by the petitioner to the eviction petition filed under Section 14 of the H.P. Urban Rent Control Act, 1987, the petitioner, in para 11 has clearly admitted that no rent even at the rate of Rs.1800/- per month has been paid by him to the respondent w.e.f. January, 2005. With a view to protecting the interest of the respondent and to ensure that at least the admitted arrears of rent at the admitted rate are paid to him, I order and direct that the petitioner shall deposit before the Rent Controller the arrears of rent at the rate of Rs.1800/- per month w.e.f the month of January, 2005 uptil ending October, 2006. This shall be done within four weeks from today. With effect from the month of November, 2006 onwards, until the disposal of the eviction petition, the petitioner shall be depositing before the Rent Controller rent/compensation for use and occupation at the rate of Rs.2500/- per month. The said monthly deposit shall be made before the 7th day of every month. If the arrears are not deposited within the aforesaid period and if any default is made for the payment of monthly rent, the defence of the petitioner before the Rent Controller shall be struck off.

The respondent shall be at liberty to withdraw the arrears as well as the amount

monthly deposited before the Rent Controller. The aforesaid deposit as well as the drawal of the arrears as well as the monthly rent by the respondent shall be totally and absolutely without any prejudice to the rights and contentions of the parties in the eviction petition.

Apart from the fact that this deposit and drawal would be without any prejudice to the rights and contentions of the parties in the eviction petition, I wish to categorically observe and direct that the deposit of the arrears by the petitioner for the period starting from January, 2005 and at the rate of Rs.1800/- per month and thereafter the payment by him at the rate of Rs.2500/- per month has been ordered by me only as a tentative/provisional measure, based as it is upon the admission of the petitioner in the reply filed by him to the eviction petition. In arriving at the aforesaid figure I on my part have not applied my mind to the contentious issue and have not considered the rival contentions of the parties. Since these figures have been arrived at by me only on the basis of the admission made by the petitioner, I observe and direct that the learned Rent Controller while finally deciding the rate

of rent which the petitioner would have been and would be liable to pay as also the period of arrears shall not be in any manner influenced by this order at all. This aspect shall be considered and decided by him on its own merits on the basis of the material and evidence available before him.

The Rent Controller shall ensure, by adopting all possible means and methods that the report of the Hand Writing Expert is received by him before 31st December, 2006. I also direct that steps shall be taken to expedite the conclusion of the proceedings in the aforesaid eviction petition.

The petition is disposed of.

CMP No.285 of 2006.

In view of the disposal of the main petition, this application is also disposed of. Interim order dated 23rd June, 2006 shall stand vacated.

Dasti copy on usual terms.

20th October, 2006. (V.K. Gupta), C.J.
(tr)